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# Municipal Corporations--Power to Relieve Unemployment by Purchasing Industrial Property for Lease to Incoming Industry

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MUNICIPAL CORPORATIONS—POWER TO RELIEVE UNEMPLOYMENT BY PURCHASING INDUSTRIAL PROPERTY FOR LEASE TO INCOMING INDUSTRY—The City of Henderson was suffering from serious unemployment. A new industry, which would afford permanent employment to a substantial number of citizens, promised to locate in Henderson if the city would provide industrial premises. The city arranged to purchase such premises from a local industrial failure and lease them to the incoming company. Proceeding under the authority of Ky. Rev. Stat.<sup>1</sup> section 58.010, the city adopted an ordinance providing for the issuance of revenue bonds to be retired by income from the lease. But revenues from such leases are dependent upon the continued success of the company. Therefore, as inducement to municipal bond purchasers, the city pledged the surplus revenues from its gas distributing plant as additional security. On appeal from a declaratory judgment adverse to the city, *held*: Affirmed. "It is sufficient to hold that the court could well have rested its decision wholly on the ground that the proposed venture is not authorized by the statute under which it was being undertaken." *City of Henderson v. Todd*, 314 S.W.2d 948 (Ky. 1958).

The basic problem presented by this case originated in the days of railroad expansion when cities vied with one another in public expenditures to keep the iron horse from passing them by, leaving a feared wake of economic desolation. The corruption, overextension of public credit, and attempted repudiation of public debt are now a matter of history.<sup>2</sup> Consequent to these absues, Kentucky adopted some of the common constitutional limitations on the power to tax<sup>3</sup> become indebted,<sup>4</sup> and extend credit.<sup>5</sup>

In view of current attempts of Kentucky cities to attract new industry by offering industrial property for lease, this comment will explore some of the available procedures the city may utilize in acquiring the property to be leased.

A municipality normally must find all authority for its proposed action in statutes promulgated by the state legislature.<sup>6</sup> In search-

<sup>1</sup> Hereinafter cited as KRS.

<sup>2</sup> For a historical development of the "Public Purpose" doctrine, see McAllister, "Public Purpose in Taxation," 18 Calif. L. Rev. 137, 241 (1930).

<sup>3</sup> Ky. Const. § 171 provides, "Taxes shall be levied and collected for public purposes only . . ."

<sup>4</sup> Ky. Const. § 157 provides, "No county, city, [or] town . . . shall be authorized . . . to become indebted . . . to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof . . ."

<sup>5</sup> Ky. Const. § 179 provides that a city may not extend its credit to a private corporation except for public purposes.

<sup>6</sup> *Johnston v. Louisville*, 74 Ky. (11 Bush) 527 (1875); *District of Clifton v. Cummins*, 165 Ky. 526, 177 S.W. 432 (1915); *Barrow v. Bradley*, 190

ing the legislative provisions, we must keep in mind the practical context of the problem. The city may have trouble convincing municipal bond purchasers that the industry is certain to stay and make rental payments on the lease until the bonds are retired. And to market the bonds, the city may have to give additional security. The first possibility is to issue general obligation bonds of the city which will be paid directly from tax revenues. Under the constitutional provisions<sup>7</sup> and KRS secs. 66.050-070, this may be done only if (1) the project is for a "public purpose" and (2) the proposed indebtedness has been submitted to the voters, two-thirds of whom must approve the project. *Dyche v. City of London*<sup>8</sup> involved the municipal construction of industrial buildings for lease to industry. The purpose recited in the ordinance was to relieve unemployment. The bonds were to be paid by the taxing power of the city. Pursuant to KRS sec. 66.070, the plan was submitted to the voters and approved by a two-thirds majority. The court held the purchase of industrial buildings to relieve unemployment was a public project authorized by the statute relied upon.

However, the city may feel it cannot convince two-thirds of the voters that the project is meritorious enough to warrant the issuance of bonds payable directly from tax revenues. In such cases the city may elect the procedure followed in *Faulconer v. City of Danville*<sup>9</sup> where the purpose of the plan again was to relieve unemployment. The authority relied upon was KRS sec. 103.210. This statute specifically authorizes the purchase of *industrial buildings* later to be leased to industry. However, KRS sec. 103.230 requires that the bonds be payable *solely* from the revenues derived from the property purchased. So if the city feels it cannot sell bonds payable solely from lease income, it cannot follow the procedure used in the *Faulconer* case where the lease was to a company of no less substance than the General Shoe Corporation.

Faced with the preceding procedures, a city may well search for a method which evades the requirement of submitting the plan to the voters and yet allows the pledging of additional security. Henderson

Ky. 480, 227 S.W. 1016 (1921); *City of Morganfield v. Wathen*, 202 Ky. 641, 261 S.W. 12 (1924); *Bd. of Trustees of Policemen's Pension Fund v. Schupp*, 223 Ky. 269, 3 S.W.2d 606 (1928); *Warley v. Bd. of Park Comm'rs*, 233 Ky. 688, 26 S.W.2d 554 (1930); *Allen ex rel City of Middlesboro v. Hollingsworth*, 246 Ky. 812, 56 S.W.2d 530 (1933); *Juett v. Town of Williamstown*, 248 Ky. 235, 58 S.W.2d 411 (1933); *RFC v. City of Richmond*, 249 Ky. 787, 61 S.W.2d 631 (1933); *Nourse v. City of Russellville*, 257 Ky. 525, 78 S.W.2d 761 (1935); *Eagle v. City of Corbin*, 275 Ky. 808, 122 S.W.2d 798 (1938).

<sup>7</sup> Cited in notes 3, 4, and 5 *supra*.

<sup>8</sup> 288 S.W.2d 648 (Ky. 1956).

<sup>9</sup> 313 Ky. 468, 232 S.W.2d 80 (1950).

apparently hoped to find the answer in KRS sec. 58.010, which authorizes "public projects" defined in broad terms of public health and welfare and provides for the pledging of *any funds or tax revenues not required by law to be devoted to some other purpose*.<sup>10</sup> There is language in the *Faulconer* case<sup>11</sup> which indicates that the court might hold the industrial building purchase situation a "public project" as defined by KRS sec. 58.010. Indeed, the court itself only six years later said: "And in *Faulconer v. City of Danville* . . . we held that the acquisition and ownership by a city of an 'industrial building' was a 'public project' within the purview of KRS Chap. 58, authorizing the issuance of revenue bonds."<sup>12</sup> Unfortunately for the city fathers of Henderson, the court in the principal case refused to adhere to its previous statements and found such ventures are not authorized by KRS sec. 50.010.

In conclusion, it may be well to speculate upon the practical effects of the decision reached in the principal case. As the law of Kentucky now stands, a city may finance such projects either (1) by general obligation bonds secured by the taxing power under KRS secs. 66.050-070, or (2) by revenue bonds payable solely from the project income as authorized by KRS sec. 103.230. Thus, cities oppressed with unemployment and faced with the offer of industrial salvation can purchase industrial property to lease only if they can surmount the two-thirds vote barrier of KRS sec. 66.070, or can persuade the municipal bond buyers that the industry is certain to stay and make rental payments on the lease. Considering the current bond market and the availability of municipal bonds secured by the taxing power, the above procedures hardly seem practical. It would appear one primary qualification of the city councilmen of the future will be the power of salesmanship—either to the voters, or to the municipal bond purchaser.

G. W. Shadoan

TRIAL PROCEDURE—INSTRUCTIONS TO JURY—NONTAXABILITY OF PERSONAL INJURY AWARD.—Plaintiff brought an action to recover damages for personal injuries caused by the alleged negligence of the defendant railroad. The defendant requested that the jury be instructed that any award given plaintiff would not be subject to income taxes, state or federal. From the refusal of the court to give the instruction, the defendant appealed. *Held*: Affirmed. *Louisville & Nashville Railroad*

<sup>10</sup> KRS § 58.130.

<sup>11</sup> *Faulconer v. City of Danville*, 313 Ky. 468, 471, 232 S.W.2d 80, 82 (1950).

<sup>12</sup> *Dyche v. City of London*, 288 S.W.2d 648, 651 (Ky. 1956).